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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/717,110	11/19/2003	Richard L. Bontrager	RSVP-03008US0	7308

7590 04/20/2005

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EXAMINER

SZUMNY, JONATHON A

ART UNIT PAPER NUMBER

3632

DATE MAILED: 04/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/717,110

Applicant(s)

BONTRAGER ET AL.

Examiner

Jon A Szumny

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 February 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 3-6, 15-19, 21, 22 and 24-39 is/are pending in the application.
- 4a) Of the above claim(s) 15-19, 22 and 25-28 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 21 and 24 is/are allowed.
- 6) ☒ Claim(s) 3-6 and 29-39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.


### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 9/30/04 & 2/14/05.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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 This is the ~~second~~<sup>third</sup> office action for application number 10/717,100, Modified Spring System End Cap for Packaging Fragile Articles Within Shipping Cartons, filed on November 19, 2003.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

*Election/Restrictions*

Claims 15-19, 22 and 25-28 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on July 2, 2004.

*Information Disclosure Statement*

Receipt is acknowledged of each Form PTO-1449, Information Disclosure Statement, which have been reviewed by the Examiner.

*Claim Objections*

Claims 21 and 24 are objected to because of the following informalities:

In each of claims 21 and 24, both occurrences of "bellow" should be --bellows--.

Appropriate correction is required.

*Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter that the applicant regards as his invention.

Claims 4, 6 and 29-36 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 4 recites the limitation "the at least one rib" and "the at least one spring system" in lines 1-2 while claim 6 recites "each of the at least one spring systems" in lines 1-2. There is insufficient antecedent basis for these limitations in the claims.

Regarding claim 29, it is not clear if the applicant is intending to functionally or positively recite the carton and gap as part of the invention. The preamble of claim 29 states the former ("for use in retaining...with a carton..."), but then the carton is recited positively later on ("...wherein said outer wall extends...of the carton such that a gap exists..." and "...at least a portion of the rib projecting a distance that varies with the gap such that said portion... of the carton"). A similar situation exists in claim 33. The applicant must make it clear whether the carton and gap are intended to be recited functionally or positively. For the purposes of this office action, the Examiner will assume the carton and gap are recited merely *functionally*.

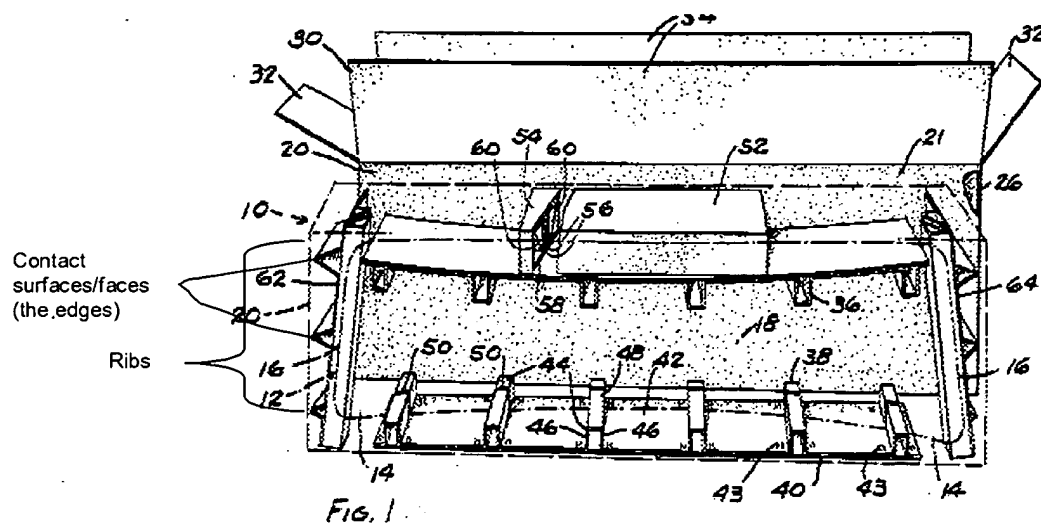
Claim 33 recites the limitation "the second plane" in line 2. There is insufficient antecedent basis for this limitation in the claim.

*Claim Rejections - 35 USC § 103*

Claims 3-6 and 29-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent number 5,799,796 to Azelton et al. in view of U.S. Patent number 2,769,534 to Lidgard.

Azelton et al. '796 discloses a spring system end cap (figures 1A,1B) comprising a base (surface below 4 adapted to rest on a surface), a platform portion (4) generally arranged in a first plane, a sidewall structure (6,8) that suspends the platform above the base and including an inner wall (10) connected with the platform portion and surrounding the periphery of the platform portion, and an outer wall (12) forming an acute angle relative to a second plane (there are infinite such "second planes" that would suffice) perpendicular to the first plane and surrounding the periphery of the inner wall and extending from the base, at least one spring system (14) connected between the inner wall and the outer wall wherein the spring system includes at least one bellows (20), wherein the sidewall structure includes a plurality of the spring systems formed end to end, wherein each spring system is connected with the outer wall along a ridge forming a plurality of arcs (see figure 1B) connected end to end along the length of the sidewall structure.

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However, Azelton et al. '796 fails to specifically teach at least one rib protruding from the outer wall. Nevertheless, Lidgard '534 divulges an end cap for supporting an article (figures 1,2, see above), wherein the end cap includes ribs (above) protruding from an outer wall. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have included ribs on the outer wall of Azelton et al. '796 as in Lidgard '534 so as to allow the end caps along with an object being held by the end caps to more closely conform to the inside of a carton or box which would provide for a more stable assembly. Further, it would have been obvious to have provided ribs on each of the spring systems so as to provide for an even more stable assembly, in addition to the fact that doing so is simply seen as a duplication of parts. Further, a contact surface of the rib (above, a "surface" is defined in Merriam Webster's Collegiate Dictionary - 10<sup>th</sup> Edition as "the exterior...of an object or body", so clearly each of these is a "contact surface") is formed generally parallel to the second plane, wherein the spring system is operable connected with the rib; wherein when the at least one rib/at least one rib is impacted, the rib/at least one rib could inherently engage the spring system/at least one

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spring system (if engaged with enough force); wherein the rib is approximately centered along the spring system (see middle rib of Lidgard '534).

Further, regarding claims 35, 36, 38 and 39, Azelton et al. '796 in view of Lidgard '534 fail to specifically teach the contact surface to have an approximately trapezoidal/rectangular shape. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have constructed the contact surface to be any number of various shapes, including trapezoidal/rectangular, so long as the rib still provides the function of allowing an object with end caps to conform to the inside of a box, in addition to satisfying the preferences of operators/manufacturers.

#### *Allowable Subject Matter*

Claims 21 and 24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Reasons for allowance for claims 21 and 24 can be found in a previous office action.

#### *Response to Arguments*

Applicant's arguments filed February 14, 2005 have been fully considered but they are not persuasive.

Applicant's arguments with respect to claims 3-6 and 29-39 have been considered but are moot in view of the new ground(s) of rejection.

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*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jon A Szumny whose telephone number is (571) 272-6824. The examiner can normally be reached on Monday-Friday 8-4.

The fax phone number for the organization where this application and proceeding are assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-3600.

A handwritten signature in black ink, appearing to read 'Jon Szumny', with a stylized flourish extending to the right.

Jon Szumny  
Patent Examiner  
Technology Center 3600  
Art Unit 3632  
April 11, 2005